No. 54

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1955

UNITED STATES OF AMERICA,

Appellant

vs.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

BRIEF FOR APPELLEES

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BRIEF FOR APPELLEES

Jurisdiction

If the order of the District Court was in fact in arrest of judgment rather than, in substance, as appellees have contended, a judgment *non obstante veredicto* because based in part upon consideration of the evidence, appellant's statement in regard to jurisdiction is sufficient.

Question

Appellees believe that the question formulated by the appellant does not correctly state the point at issue. As presented by the Government, the question sounds chiefly in interference with commerce by "force, violence and fear," whereas the statute sounds primarily in interfer-

ence by "robbery and extortion," with force, violence and fear only as elements thereof or contributing factors thereto. The indictment itself as drawn purports to sound in "extortion" whereas the question, if it has any reference whatsoever to extortion, touches it only by implication. The real question even on the government's theory of the appeal then is whether the indictment is sufficient to charge defendants with a crime under the act. The District Court held that it is not sufficient (R. 18).

Statutes Involved

The statute as set out in the appellant's brief, although sometimes called the Hobbs Act, is in reality the codified revision of that Act. The Hobbs Act itself was passed in 1946; that set forth in the Government's Brief in 1948. Both are revisions of an older Anti-Racketeering Act known as the Copeland Act.

This case, therefore, involves more than the one statute because, for its construction all of these must be considered together. In addition there are at least two other Acts *in pari materia*.

1. The Copeland Act of 1934, 48 Stat. 979; 18 U.S.C. Secs. 420a and 420e, 1940 Ed.

2. The Lea or Petrillo Act of 1946, 60 Stat. 89; 47 U.S.C. Sec. 506.

3. The Hobbs Act of 1946, 60 Stat. 420.

4. The Taft-Hartley Act of 1947, 61 Stat. 140; 29 U.S.C. Sec. 158.

5. The 1948 Codification of the Hobbs Act, 62 Stat. 793; 18 U.S.C. 1951.

Pertinent parts of these acts are set forth in the appendix, in tabular form, for ready comparison of the significant provisions.

STATEMENT

In addition to what the Government has stated, while it is true that the court submitted to the jury but four of the nine counts of the indictment, this was done on motion of the Government at the close of all the evidence and in the face of defendants' motion for a directed verdict. (Rec. 10.)

We also point out that of the four counts submitted, one and only one, namely, Count IX, charged defendants with conspiracy and that on this count, as on Count IV, they were acquitted by the jury. Thus, there is no question of conspiracy to be considered in this case.

And we further suggest that the District Court based its decision on more than the mere allegations of the indictment, but upon a consideration of facts in evidence, mentioned in the Memorandum of Opinion (Rec. 14-16) yet in no wise alleged in the indictment, for example: (1) that defendant-appellee, Green, was acting as a Union representative; (2) that his conduct in demanding the employment of labor was to obtain conformance with customary and agreed practices by labor and contractors in the community; (3) that the proof showed a mere disagreement between contractor and labor; and (4) that defendants' conduct was in no wise an attempt to extort for the benefit of either the Union or Green.

SUMMARY OF ARGUMENT

Appellees' argument is in two parts, as follows:

I. That the Anti-Racketeering Act must be read and interpreted in connection with other acts *in pari materia* or preemptive of the offense, if any, involved, and—

II. That appellant's argument is largely inapplicable to the facts and issue of this case and, beyond that, fails to meet the issue involved, namely, that of the true meaning and scope of the Act.

As to Part I, appellees suggest, *first*, that the Anti-Racketeering Act (18 U.S.C. 1951) must be read in connection with (a) the so-called Lea or Petrillo Act (47 U.S.C. 506) which deals expressly with feather-bedding practices of labor and was passed at the same session of Congress as the Hobbs Act, and (b) the Taft-Hartley Act (29 U.S.C. 158) expressly identified in paragraph (c) of the Anti-Racketeering Act as now in the Code; *second*, that said Acts conclusively show that the District Court in this case was correct in its conclusion that the defendants were charged with no crime within the Court's jurisdiction to try; and, *third*, that to have sustained the Government's position would have required the Court, (A) to legislate by reading into the Act a coverage not embraced by it, in violation of Section 1 of Article 1 of the Constitution vesting legislative powers in the Congress, and (B) to deprive defendants of their rights under the Fifth and Sixth amendments of the Constitution.

Part II of Appellees' Argument deals with Appellant's brief. Approximately fifty per cent of appellant's brief is devoted to matter, upon which there is no controversy, and upon which appellees insist as staunchly as does appellant. This point is that the Anti-Racketeering Act

applies just as clearly to a labor organization and labor union members as to any others. At no stage in these proceedings, from the day of the return of this indictment to now, have appellees or either of them contended or claimed that union membership as such, constitutes a cloak of immunity from prosecution for robbery or extortion in Interstate Commerce. Union or no union, under the Hobbs Act, appellees have been charged with no crime and have committed no act of racketeering, and the facts alleged in the indictment against them do not constitute racketeering under the Act. The indictment does not charge them with seeking anything whatsoever for themselves or either of them; does not allege that they sought or received anything of value; does not allege to whom the wages were to be paid, whether to these defendants, to the swamper, or to anyone; and, unless the word "extortion" itself as used in the indictment imputes it, does not charge them or either of them with any *wrongful intent* to constitute a crime under the Act—in short, that if it charges them with any offense, it is an attempted feather-bedding which is not covered by the Act either as written by Congress, or as intended by Congress.

ARGUMENT

I.

As the District Court said (R. 16) to hold that "Where a labor organization or officer of said organization advocated and demanded the employment of labor which had been customary and agreed to by contractors and laborers in the community, was a violation of this particular act appears to me to be unreasonable."

> "The correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law, that all acts in *pari materia* are to be taken together, as if they were one law. (Doug. 30; 2 Term Rep., 387 586; 4 *Maul vs. Selw*, 210.) If a thing is contained in a subsequent statute, it shall be taken to be within the meaning of that statute . . ."
>
> **United States vs. Freeman**, 3 How. 556, 562.

To the same effect, Chief Justice Marshal in *Alexander vs. The Mayor etc. of Alexandria*, 5 Cronch 1.

A.

The Lea Act and the Hobbs Act must be construed together because they are in pari materia.

United States vs. Stewart, 311 U.S. 60, 64.

These Acts were passed by the same Congress at the same session.

When these Acts (See Appendix P. 38) are read together, it is seen at once that the Government's indictment in this case is a patent attempt to charge against a common laborer's union and an individual, and subject them to a penalty of twenty years in prison, a $10,000 fine, or both, the commission of the very sort of thing pro-

scribed by the Lea Act for the broadcasting industry where the maximum penalty is only one year in prison, $1,000 fine, or both.

In passing both of these acts at the same session did Congress intend such preferential treatment to one union over another? Did it intend that the laborer should spend twenty years for that which the artist might pay only one? Did it intend arbitrarily to discriminate in favor of one group against another in the ratio of twenty to one on imprisonment and ten to one if fined for the very same kind of conduct?

Again, did it suppose for a moment that the offense defined in the Hobbs Act should include that of the Lea?

Both in law and reason all of these questions must be answered in the negative.

In this connection the words of Mr. Justice Field, in the case of *Mills, Administrator vs. Scott*, 99 U.S. 294, are singularly in point. The Court said:

> "There is in the statute no exception in terms of any class of cases; yet such a construction must be given to its provisions as not to impair the operation of other laws, which it is not reasonable to suppose the Legislature intended to repeal."

So here, it is not reasonable to suppose that Congress intended, by passing the Lea Act in 1946, to repeal the Copeland Act of 1934 if that Act, as the Government seems to contend, covered featherbedding; nor in passing the Hobbs Act a few weeks after the Lea Act to repeal the Lea Act, if the Hobbs Act proscribed the very same thing. Yet, in reason, such repeals by implication would be inescapable under the interpretation of the Anti-Racketeering Act here sought by the Government.

In *Kent's Commentaries*, 13th ed. P. 551, Chancellor Kent said:

> "Several acts in *pari materia* and relating to the same subject, are to be taken together and compared in the construction of them because they are considered as having one object in view and as acting upon one system. This rule was declared in the cases of *Rex vs. Loxdale*, and the *Earl of Ailesbury vs. Pattison;* and the rule applies, although some of the statutes may have expired; or are not referred to in the other acts. The object of the rule is to ascertain and carry into effect the intention; . . ."

The Government has set out at length statements of proponents of the Hobbs amendment on the floor of the Congress showing that the Act was intended to embrace and proscribe racketeering in interstate commerce. We do not repeat those citations here because they affirm that which we contend.

We add but three further comments, that of Representative Hobbs himself (91 Cong. Rec. 11912, 79th Cong. First Sess.) who said:

> "Mr. Chairman, I want to make it perfectly clear that the sole and simple purpose, the single purpose of this Bill, is to do the best we can do to protect interstate commerce and free the highways and streets of this country of *robbers*." (Emphasis added.)

And that of Representative Summers at P. 11908, of the same Record:

> ". . . As I can understand this Bill, there is not a thing in it to interfere in the slightest degree with any legitimate activity on the part of labor people or labor unions, *unless somebody thinks it is legitimate for them to rob and extort*. If that is their notion then this Bill covers that activity." (Emphasis added.)

And that of Representative Whittington from P. 11913:

> "It punishes extortion and robbery no matter by whom committed. . . ."

But none of these statements from the Congressional Record nor any other purport to affirm, suggest, declare or even so much as infer that anyone, either for or against the Bill, thought or intended or believed for a single moment that it covered the kind of activity described in and proscribed by the Lea Act. Indeed, the legislative history of the Lea Act shows that the subject matter covered by it was in the mind of Congress something entirely different from that embraced in the Hobbs Act—in short, that the one dealt with feather-bedding; the other, racketeering, by robbery or extortion.

The Lea Act, briefly summarized, makes it unlawful, by the use of express or implied threats of the use of force, violence, intimidation or duress to coerce, compel or constrain or attempt to coerce, compel or constrain the employer to employ or agree to employ any person or persons in excess of the number needed to perform actual services or to pay or give or agree to pay or give any money or other thing of value for services which are not to be performed.

The Court will notice the similarity between the wording of the Lea Act and the question as presented by the government (Appellant's Brief P. 2).

In substance the defendants here are accused of extortion by feather-bedding. As defined in the Hobbs Act, extortion means the obtaining of property (not jobs) from another, with his consent, induced by the wrongful use of actual or threatened force, violence or fear. Where, in the Hobbs Act, is there any language making it a crime to coerce, compel or constrain or attempt to coerce, compel or constrain anyone by any means to employ any person or persons in excess of the number needed (superfluous help) or to coerce, compel or constrain or attempt to coerce, compel or constrain the payment of money or other thing of

value for work not to be performed (fictitious services)? There is none. Yet the Government would write these provisions of the Lea Act into the Hobbs Act by construction or implication.

Moreover, in the Lea Act, the Congress set forth its description of "superfluous" services in one clause, (a)(1), and "fictitious" services in another, (a)(4), (See Appendix P. 39) making each separately an offense, as they must be, since they are the antithesis of each other, one describing more work than is needed, the other, no work at all.

The incongruity of the Government's position, we submit, is more fully brought out by a definition of the terms "superfluous" and "fictitious." Both have been defined by Webster and other Dictionaries, as follows:

> "Superfluous" means, in excess of what is sufficient, necessary, normal, or desirable; superabundance; surplus, not needed."
>
> "Fictitious" means in contrast—"feigned, imaginary, pretended, not real; fabulous, counterfeit, not genuine."

Thus these two words are repugnant. By construction it might be said that they embrace the situations described in the cited paragraphs of the Lea Act—that is, (a)(4) and (a)(4) above defining two different types of feather-bedding, but there is no language in the Anti-Racketeering Act to which they are applicable. Neither by common law nor by statute are the terms "superfluous" or "fictitious" embraced in the Hobbs Act.

In short, the Government seeks, by using the word "superfluous", to bring within the Hobbs Act the crime of feather-bedding as set forth in paragraph (a)(1) of the Lea Act, and, by the use of the word "fictitious" to include the feather-bedding described in (a)(4) of the Lea Act.

Thus to do, we submit, is to contravene well established and salutory principles namely:

(1) Statutes creating crimes are to be strictly construed in favor of the accused; they may not be held to extend to cases not covered by the words used.

United States vs. Resnick, 299 U.S. 207, 210;
Fasula vs. United States, 272 U.S. 620, 628;
United States vs. Wiltberger, 5 Wheat. 76, 95.

(2) There are no constructive offenses, no crime by imputation.

United States vs. Resnick, Supra;
Fasula vs. United States, Supra;
United States vs. Chase, 135 U.S. 255, 261.

B.

Further to make its intention clear, the Congress, in passing the Hobbs Act in 1946 and, again, in 1948, in revising and codifying the same, left explicit instructions as to the scope of the offenses embraced by the Act, namely, robbery and extortion.

By the 1946 Amendment (Hobbs) Congress removed from the original Anti-Racketeering Act of 1934, the controversial phrase "not including, however the payment of wages by a bona fide employer to a bona fide employee" but it also did much more than that; it substituted the word "fear" for "coercion"; it removed entirely the phrase "the purchase or rental of property or protective services"; it wrote into the Act, for the first time the words "robbery" and "extortion" as such; and it made other changes. It eventually shortened the Original Act from approximately 484 words down to 282 words. It made such changes as it deemed necessary to reconstruct the act as an *anti-racketeering* measure *aimed at robbery and extortion only.* (Emphasis added.)

Certainly in this case, where the word *extortion* is included in the indictment, unless it shall be treated as surplusage, it is an integral part of the charge.

Can it be treated as "surplusage"? In formulating its question apparently the Government wishes to treat it as surplus (See question presented in Brief of U.S., P. 2). The word extortion does not appear in the question at all.

But if "extortion" be treated as surplusage, is the wording of the statute not thus taken out of the hands of Congress? And if extortion can be treated as surplusage in an indictment, may not robbery also be? In other words, if one may go, must both not go? And if both go, what then is left? We submit that to ask these questions is to answer them. By what authority can any statute be so revised and rewritten except by Congress?

Such, we think, was the sense in which the District Court said that to construe the Act as the Government sought to have it construed was to extend the jurisdiction of the Court beyond its constitutional limits.

C.

Having thus revised the Anti-Racketeering Act in 1946, the Congress in 1947 passed the Taft-Hartley Amendment to the Labor Relations Act further showing its intention (61 Stat. 140; 29 U.S.C. Sec. 158—See P. 42 of Appendix).

By this amendment, Congress, save as previously dealt with in the Le... Act for the broadcasting industry, if it did not explicitly preempt the field of feather-bedding, clearly showed by its action at least that, within the purview of that body, the Hobbs Act in no wise embraced the field.

Section 8 (b)(6) of the Taft-Hartley Act (T. 29 U.S.C. Sec. 158(b)(6) (See P. 42 of Appendix) made it an unfair labor practice for "a labor organization or its agents to cause or attempt to cause an employer to pay or deliver or

agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed," language almost identical with that used in Paragraph (a)(4) of the Lea Act (T. 47, Sec. 506(a)(4)).

Section 10 of the Taft Hartley Act (See Appendix B, p. 42) in paragraph (a), empowered the National Labor Relations Board to prevent any person from engaging in an unfair labor practice listed in the above named Section 8 affecting commerce; in paragraph (e), gave the Board power to petition any Circuit Court of Appeals or, when they might be in vacation, any district court, for enforcement of its order; and expressly and pointedly and emphatically added "The jurisdiction of the court shall be exclusive. . . ."

In connection therewith, the words of Senator Taft himself are significant (93 Cong. Rec. 6441):

> "There is one further provision which may possibly be of interest, which was not in the Senate bill. The House had rather elaborate provisions prohibiting so-called feather-bedding practices and making them unlawful labor practices. The Senate conferees, while not approving of feather-bedding practices, felt that it was impracticable to give to a board or a court the power to say that so many men are all right, and so many men are too many. It would require a practical application of the law by the courts in hundreds of different industries, and a determination of facts which it seemed to me would be almost impossible. So we declined to adopt the provisions which are now in the Petrillo Act. After all, the statute applies to only one industry. Those provisions are now the subject of court procedure. Their constitutionality has been questioned. We thought that probably we had better wait and see what happened, in any event, even though we are in favor of prohibiting all feather-bedding practices. However, we did accept one provision which makes it an unlawful labor practice for a union to

accept money for people who do not work. That seemed to be a fairly clear case, easy to determine, and we accepted that additional unfair labor practice on the part of unions, which was not in the Senate bill." 93 Cong. Rec. 6441.

See also, his supplementary analysis inserted in the Record June 12, 1947: 93 Cong. Rec. 6859.

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1. In addition to what Senator Taft has said, the difficulties in formulating legislation in regard to the so-called practice of featherbedding are further illustrated by a consideration of the work of a swamper, whose employment, although affecting commerce, may be beneficial to it and not detrimental at all. A swamper is a common laborer who tends the heavy excavating or bull-dozing machines in levee and river work—cuts ahead of the machine for pit-falls and obstructions, guides its progress through difficult areas, attaches to it other equipment, cleans the track of the machine when it becomes clogged with dirt and debris, supplies it with oil, water, gas, etc. He earns but a common laborer's wage. The heavy equipment operator, together with his machine, on the other hand, draws perhaps twenty times as much. True he may be able to operate without the swamper. The operator himself can service his machine. He can stop it, get off it, let it stand, do his own scouting ahead, come back, get on, start up, proceed a pace, and then repeat the process. He may leave the machine idle while he fastens on to it, without help, the obstacles to be dragged away. By so doing he may double or triple the cost of the particular job being done by him. With the help of the swamper, by way of contrast, instead of enlarging the duration of the job, he may cut it down. With the swamper's help the machine's productivity may be and usually is increased tremendously so that the total cost with a swamper becomes far less than the cost without him. A heavy equipment owner may not like this. He may call it, as he has, "imposed, unwanted, superfluous and fictitious service." With a swamper, for example, he may do a job in ten hours, at $23.00 per hour—$21.50 for himself and machine; $1.50 for the swamper—total $230.00 whereas without the swamper, he might be able, as above indicated, to extend the work for twenty hours or even thirty hours, thereby doubling or tripling the cost. Under such circumstances employment of a swamper may be violently opposed by the owner, particularly if he is on a cost plus contract. Therefore, it cannot be assumed that the employment of the swamper is *ipso facto* a bad economic practice, and certainly a Union agent undertaking to secure his employment, is not automatically, a racketeer.

Thus Congress has expressed itself unmistakably in the matter of feather-bedding, and under the principle of *expressio unius est exclusio alterius*, only that feather-bedding which requires the payment of money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed (fictitious services—no work) is an unfair labor practice, while superfluous labor—more than needed—which the Government here seeks to make one of the most serious crimes in the Federal Code, is not even an unfair labor practice, other than as proscribed by the Lea Act in the broadcasting industry. In that connection, is there any language in the Anti-Racketeering Act informing the public that this is not so? Can any citizen by reading the Act gain information that it is not? Indeed reading the Act and particularly paragraph (c) thereof, would any citizen not be led to believe that the very opposite is true so that, to adopt the Government's interpretation of the Act, would produce not an Act of information, but rather one misleading to the public?

So to interpret the Act would make it unconstitutional. It would bring it clearly within the language of this Court as found in the case of *Connolly vs. General Construction Company*, 269 U.S. 385, 393:

> "The dividing line between what is lawful and unlawful cannot be left to conjecture. The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue."

This, too, is the universal rule. Since Congress, by the

Taft-Hartley Act, has given *exclusive jurisdiction* to the Circuit Courts of Appeal or the District Courts, as the case may be (See Sec. 10(e) Taft-Hartley, P. 42 of Appendix) to enforce, on petition by the National Labor Relations Board, as to "fictitious" services, can it be that the doing of more work than may be necessary or wanted—"superfluous" services, is a vicious crime while the doing of no work at all is only subject to National Labor Relations Board enforcement?

Appellees submit that in passing the Hobbs Act Congress aimed at racketeering, that it arrived at a proscription of racketeering in the Act, and knew both what it had and had not done when it took up the question of feather-bedding in the Taft-Hartley amendment.

The Congressional intent to preempt the field within the scope and provisions of Section 8(b)(6) and 10(a) of the Taft-Hartley Act is manifest by the very language of these sections. There can be no doubt that in the instant case the employers could have availed themselves of the above provisions of the Taft-Hartley. That being the case, can it be said to be within the whimsey or discretion of the Government as to whether it will proceed in a case like this under Taft-Hartley or the Hobbs Act, or, if in the broadcasting industry, under the Lea, Taft-Hartley or Hobbs Acts? We think not.

D.

With Taft-Hartley thus on the Statute Books, Congress came next (in 1948) to a codification of the Hobbs Act and for this purpose rewrote and reenacted the measure. In doing so, it rearranged, consolidated and shortened the Act considerably and of especial significance is the reenactment of Title II as Paragraph (c) of the Act.

As now written, Title II is included in paragraph (c) of the Act and there Congress specifically directed that this Act "shall not be construed to repeal, modify or affect . . . sections 151-166 of Title 29 . . .". Sections 151 to 166 of Title 29 include—in fact they are—the Taft-Hartley Act. Thus by express direction of Congress, the Hobbs Act is not to repeal, modify or affect the Taft-Hartley definition of an unfair labor practice.

In contradistinction to the original wording of the Copeland Act, paragraph (c) of the Anti-Racketeering Act, as now enacted, is not a proviso and it is not an exception. It is a rule of construction, a congressional direction, applicable to the entire Act. It does not mean that Racketeering is prohibited with certain provisos. It does not mean that racketeering is unlawful except when done by certain persons or organizations. It places no restrictions upon the anti-racketeering Act as such to punish racketeers, whomsoever they may be. Instead, it goes to the very definition of racketeering itself and, in its effect here, simply says, racketeering is racketeering, and shall be dealt with as such, union or no union; this definition means robbery and extortion; feather-bedding, to the extent described by Taft-Hartley, is not racketeering but is unfair labor practice, to be dealt with as Congress may from time to time determine; beyond this, feather-bedding except under the Lea Act is not proscribed.

The constitutionality of the Lea Act was upheld by this Court in *United States vs. Petrillo*, 332 U.S. 1, 13, 14. In his specially concurring opinion in that case, Mr. Justice Frankfurter said (P. 13, 14):

> "It would be a usurpation of the legislative authority for us to find that there was no basis in reason for the judgment of Congress that the public interest called for legislation to deal with what is colloquially

called 'feather-bedding' in connection with the Broadcasting business. Beyond that it is not our province to go."

As Senator Taft pointed out, before going further in passing legislation in respect to feather-bedding, Congress wanted to wait and see what happened to the Lea Act. Since then, though the Lea Act has been upheld, Congress has taken no further action on the subject. If legislation in this field is needed, it should be obtained from Congress, not by judicial construction.

To answer the question formulated by the Government in this case in the affirmative will be not only to affect and modify the provisions of Taft-Hartley on feather-bedding, but to repeal it outright, notwithstanding the congressional mandate, as set out in paragraph (c) thereof, on construction of the Anti-Racketeering Act:

Such too, we think, was the reasoning of the District Court in saying (R. 14) "a proper construction of the Anti-Racketeering Act clearly indicates that it does not cover the type of activity charged in the indictment."

E.

That the Act is aimed against robbery and extortion affecting Interstate Commerce and at force, violence and fear, not directly, but only as elements of the offenses of robbery and extortion is further shown by careful comparison of the three successive Anti-Racketeering Acts, those of 1934, 1946 and 1948.

In the Copeland Act of 1934 (P. 38 of Appendix) although the terms "robbery" and "extortion" were not included, sub-section (a) of Section 420a, contained among other things, a definition of common law robbery, and sub-section (b), words defining extortion. Sub-section (c) of that

Act made it a felony to commit or attempt to commit acts of physical violence "in furtherance of a plan or purpose to violate sub-sections (a) or (b)." Thus the Act proscribed violence in or in connection with the other offenses named but it did not make it applicable to violence and attempts at violence directly affecting commerce apart from robbery or extortion.

In language even clearer, this same limitation was continued in the Hobbs Act of 1946, (Appendix P. 30). After defining the terms "robbery" and "extortion" in Section 1(b)(c) the Act provides in Section 2 as follows:

> "Whoever in any way or degree obstructs, delays or affects commerce, or the movement of any article or commodity in commerce, by robbery or extortion, *shall be guilty of a felony.*"

The language of Section 5 of the Amendment, is:

> "Whoever commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of section 2 shall *be guilty of a felony.*"

Not the use of violence or threats of violence to violate section 1(a), that is, to affect commerce, but to violate section 2—in other words, as part of or in support of the commission of robbery and extortion where they affect commerce—is the length and breadth of the proscription of violence and threats thereof in this Act.

If, in the Hobbs Amendment, Congress had intended to make violence the gist of the offense, instead of "robbery" and "extortion", this might easily have been accomplished by rewriting Sub-section (c) of Section 420a of the Copeland Act, in addition to eliminating the provisions as to wages paid by a bona fide employer to a bona fide employee. This, however, it did not do. On the contrary, it for the first time introduced the words "robbery" and

"extortion", designating them as felonies, into the statute and, more than that, reenacted Sub-section (c) of Section 420a of the Copeland Act into Section 5 of the Hobbs Act of 1946, expressly limiting the scope of violence or threats of violence as ingredients of the crimes of robbery and extortion.

Pertinent here is the language of Representative Hobbs (Cong. Rec. supra, P. 11912):

> "The reason that some of you who voted for the Copeland Act are against this bill is because you know it is so clearly expressed that it will do the job it is meant to do, which is to prevent interference with interstate commerce by robbery or extortion. That is all we are shooting at."

1 U.S.C. sec. 204(a) is also applicable:

> "(a) United States Code . . . whenever titles of such code have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States."

As applied in *Wong Yang Sung vs. McGrath*, 339 U.S. 33, 52; and *United States vs. Grainger*, 346 U.S. 235, 248: "Codification contemplates, implies and produces continuity of existing law in clarified form rather than its interruption." Thus, the Codification of 1948 is to be interpreted by reference to the original enactment.

The codification of 1948 produced no such fundamental change in the law as that for which the Government contends; it did not abolish *mens rea* as a necessary element of the crime; the Act is still an Anti-Racketeering Law; it is not a mere anti-violence act; and the criminal intent to rob or extort is still necessary. Involved here is not just a regulatory statute but an Act proclaiming an

Kemble demanded retroactive pay for the work completed without him, and as far as appears, without any member of his Union ever having been near the job. As to that work, not even a tender of standby labor was involved. There is no such allegation in the indictment now before this Court. There is not even an implication here that defendants or either of them sought to be paid, or to have anyone else paid, for work already done by others. This factual difference and this alone is enough to distinguish the cases and it is an important distinction under any view of the statute.

CONCLUSION TO PART II

In conclusion, we are not unmindful of the opinion by Chief Justice Taney in the case of *Aldridge et al vs. Williams*, 3 How. 9:

> "In expounding this law, the judgment of the court cannot, in any degree, be influenced by the construction placed upon it by individual members of Congress in the debate which took place on its passage, nor by the motives or reasons assigned by them for supporting or opposing amendments that were offered. The law as it passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself; and we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject, and looking, if necessary, to the public history of the times in which it was passed."

In the instant case, however, the statements of congressmen, the report of the Congressional Committee, the lan-

guage of the Act itself, the particular words used, other laws on the same subject, the history of the times in which the Act originated and was passed all unite to show that without the evil intent to rob or extort, there is no crime under this Act.

CONSTITUTIONALITY

In presenting the aforesaid arguments, appellees have not abandoned their original contention that the judgment of the District Court was based upon a consideration of the evidence as well as upon the court's interpretation of the statute, and the findings by the District Court, upon the constitutional question.

The interpretation of the Act which the Government seeks to have this Court place upon it would be unconstitutional for the reasons that—

(1) It would be in violation of Article I, Section 1 of the Constitution of the United States, because it would require this Court to exercise legislative powers;

(2) It would be in violation of the Fifth Amendment because it would deprive the defendants of their liberty or property or both without due process of law; and

(3) It would be in violation of the Sixth Amendment because it would subject the defendants to criminal prosecution without being informed of the nature and cause of the accusation.

Such a construction would write into the law such uncertainties and conjecture as to remove it from the pale of reason.

infamous crime. *Morissette vs. United States*, 342 U.S. 246.

In the 1948 Codification of the Hobbs Act of 1946, Congress reenacted Sections 2 and 5 of the 1946 Act as Section (a) of the 1948 codification, and added a specific definition of the terms "robbery" and "extortion". It did not include any definition of the terms "force and violence" except as these terms applied to extortion or robbery.

CONCLUSION TO PART I.

Thus, because of Acts of Congress *in pari materia*; because the Hobbs Act does not cover feather-bedding or attempts at feather-bedding; because it is unreasonable to suppose that Congress ever intended such offense to be treated as one of the most infamous felonies in federal criminal law; because the indictment here charges no offense in the category of gangster operations of the type against which the Anti-Racketeering Act was aimed; because the Act should not be construed to embrace by implication the sort of conduct which Congress has clearly shown it was never intended to include; and above all, because the requirement of *mens rea* has never been abolished but remains as an essential element of the crime defined in the Act, the judgment of the District Court should be affirmed.

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2. The federal Kickback Act (18 U.S.C. §74) is also illustrative of the point. Under this Act, for the crime of obtaining a kickback (extortion) by "force, intimidation or by any other means whatsoever", the penalty of a fine of "not more than $5,000 or imprisonment for not more than five years, or both" is far less than that of the Hobbs Act. Compare also other penalties in the chapter on Extortion and Threats (18 U.S.C. Ch. 11, Sections 871-877).

II.

ANSWER TO GOVERNMENT'S ARGUMENT

Appellees make three initial observations.

First, we reiterate that approximately half of the appellant's brief is devoted to support of a proposition upon which there is no controversy, namely, that the Anti-Racketeering Act proscribed racketeering, union or no union, whether there be an employer-employee relationship or not, and makes no exception.

Second, the appellant in its argument has fallen into an error—an error into which, indeed, it is difficult to avoid falling in a case of this kind—the error of stating and arguing about facts from other cases decided on evidence whereas the case in point is not to be decided upon evidence (except such as the District Court sets out in his Memorandum of Opinion (R. pp. 14-16) but upon pleadings or the common law record only (*Bishop's New Crim. Pro.* Sec. 1285; *1 Chitty Crim. Law* 661; *Carter vs. Bennett*, 15 How. 354; *United States vs. Zisblatt*, 172 F. 2d 940)—pleadings which, moreover, do not include nor even so much as imply the existence of facts such as those recited by the Government,—the error of arguing facts *de hors* the record.

Third, by the "question presented," the Government seeks to impute the words "imposed, unwanted, superfluous and fictitious" as part of the Act. Nowhere in the statute are these words to be found. Neither are they defined there. In the case of *United States vs. Petrillo*, 332 U.S. 1, there was division of opinion in this Court as to whether the words "in excess of the number of

employees needed by such licensee to perform actual services," were sufficiently clear, definite and certain as to be constitutional under the Fifth Amendment. We submit that the words, "in excess of the number needed to perform actual services" are clarity, definiteness and certainty to the nth degree as compared with the expressions "imposed, unwanted, superfluous and fictitious" used in the indictment in this case, and that to say that they are within the statute is a matter of speculation purely.

For the reasons heretofore set forth, they are not within the purview of the Act. As has been stated in this brief (P. 11) there are no federal crimes by imputation and construction, and this is particularly true where the congressional intent is plain as it is here.

Language of the Court in *Kordel vs. United States*, 335 U.S. 345-349, seems especially applicable in this connection. The Court said:

> "A criminal law is not to be read expansively to include that which is not plainly embraced within the language of the statute (citing cases), since the purpose fairly to apprise men of the boundaries of the prohibited action would then be defeated . . . . But there is no cannon against using common sense in reading a criminal law, so that strained and technical constructions do not defeat its purpose by creating exceptions from or loopholes in it."

Common sense dictates that Congress did not intend to treat a union representative or his union seeking a job for a member of that union at common laborer's wages, and no more, as an infamous criminal who ought to be subject to a twenty year sentence in the penitentiary, a $10,000 fine or both, even if paragraph (c) were not in the Act. But that paragraph forecloses any doubt about the matter. The scope of the Act should not be

expanded in effect to eliminate that section, as the interpretation here sought by the Government would surely do. And as "strained and technical constructions" should not be resorted to for the purpose of creating loopholes, neither should they be resorted to in order to create a crime. If Congress wishes to proscribe these things apart from robbery and extortion, as the Congress has done in the Lea Act, with an appropriate penalty, it may do so.

A.

THE GOVERNMENT'S CITED CASES

What of the cases cited by the Government? They total an even thirty. But eight only of them arise under one or another of the successive Anti-Racketeering Acts. Three were under the original or Copeland Act of 1934; five are under the so-called Hobbs Act.[3] But not one of the eight was decided on pleadings or the common law record, as this case comes to this Court, if this Court assumes jurisdiction. In other words, all eight were decided on a review of the actual evidence either by or via a Circuit Court of Appeals. All of them, moreover, involved either one or both of two factors not present in the instant case, namely, (1) Conspiracy (here questions of conspiracy are not involved because the defendants were acquitted of conspiracy), and (2) extortion for the benefit of the extorter (here neither defendant sought *or is charged with seeking* anything whatsoever for himself or for his personal benefit.)

Most strenuously argued are the *Local 807* case (315 U.S. 521; 86 L. ed. 1004) and the *Kemble case* (198 F. 2d 889). The Government's interpretation of the *Local 807* case, as to intent, we submit, far from being supported by the dissenting opinion of Mr. Chief Justice Stone and the subsequent Act of Congress as contended by the Government (Footnote 5 of Government's Brief P. 18) is actually negated by both; and the *Kemble case*, in which the indictment was never questioned at any stage is so different from the present case as to be clearly distinguishable.

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3. In one of these, *Nick v. United States* (192 F. 2d 666) the payment or demand was for $6,500.00; in another, *United States v. Verlack*, 225 F. 2d 665, for $7,500.00; in *Bianchi v. United States*, 219 F. 2d 42, $15,000.00; *Callanan v. United States*, 223 F. 2d 171, $28,000.00; *Hallihan v. United States*, 213 F. 2d 850 $60,000.00; *the Campagna case*, 146 F. 2d 524, $1,100,000.00. In the main they did not involve even a pretense of wages.

B.

THE LOCAL 807 CASE

In regard to the *Local 807* case and the Act of Congress following it (Hobbs Act P. 38 of Appendix) appellant says:

> "... motive in this sense is not an element of the offense under the Hobbs Act, which prohibits the use of threats and violence affecting interstate commerce to exact money regardless of the ultimate objective or motive of the robbery or extortion."
>
> "The removal of the 1934 Act's Section 2(a) exceptions by the Hobbs Act renders proof of the ultimate 'objective' of the defendant irrelevant. If threats and violence are used in connection with a plan or purpose to extort affecting interstate commerce, the crime is completed. The scienter factor is satisfied by proving '*the intention to use force and violence on the victim and the intention that the victim shall pay because of it.*'" (Emphasis added.) (pp. 16-17 U.S. Brief.)

That was a conspiracy case. The language underscored above is from Chief Justice Stone's dissent. It does not support the appellant's contention. The last part of the quotation contradicts appellant.[1] Throughout that opinion, moreover, the Chief Justice assumed that in order that a defendant be found guilty under the Act, such defendant must have had a motive to seek illegal gain as defined in the Act.

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1. Justice Stone did not say just what the Government quotes. *What he said was this:*

> "The jury was told that to convict it must find conspiracy or agreement by respondents to violate the statute and that they must have the purpose or intention to commit the crime which it defined. As I have said, the intention to commit the offense includes the intention to use force and violence on the victim and the intention that the victim shall pay because of it."

In his dissenting opinion, Chief Justice Stone said: (p. 539.)

"Respondents, who are members of a labor union, were convicted of conspiracy to violate the Anti-Racketeering Act. They, or some of them, lay in wait for trucks passing from New Jersey to New York, forced their way into the trucks and by beating the drivers procured payments *to themselves* . . ."

Again, P. 540:

"There is abundant evidence in the record from which the jury could have concluded that respondents, or some of them, conspired to compel by force and violence the truck drivers or their employers to pay the sums of money *to respondents or* some of them: . . ."

Further, P. 543:

"Upon any theory of the meaning of the statute, it was not necessary for the government to show that it was the object of the conspiracy that *all the conspirators should receive payments of money*. They would be equally guilty if they had conspired to procure the payment to some." (Emphasis added.)

Thus even the dissenting judge assumed that before a defendant might be found guilty under the Act, it must be shown that he had the evil heart to reap illicit gain by robbery or extortion.

More than that, we submit the Government is in fundamental error in regard to the *Local 807* case in another respect. This Court did not rule in that case, that racketeering was proscribed by the Act for every one except labor unions and labor union members. It decided simply that, under the particular proviso of the Act, applying the *then current* definition of the employer-employee relationship, the payment of wages by a bona fide employer to a bona fide employee was not racketeering. In other words, it dealt not with the question of who might or might not

commit the crime but with that of what the crime was. Indeed, as Mr. Justice Byrnes wrote at page 534 of the majority opinion, "We do not mean that an offer to work or even the actual performance of some service necessarily entitled one to immunity under the exception."

Similarly, in removing the controversial words, Congress did not say, as the Government argues, that unions and union members heretofore exempt from this Act are no longer exempt but, rather, that the definition of the crime of racketeering is no longer subject to the proviso. Beyond that, instead of expanding, Congress actually tightened the Act by, among other things, (1) for the first time inserting and defining the two words, "robbery" and "extortion", (2) by substantially reenacting Sub-section (c) of Sec. 420a of the Copeland Act of 1934, as Section 5 of the Hobbs Act of 1946, and (3) by making Title II (paragraph (c) of the Codification of 1948) more definite than it had been.

By so doing, far from removing the element of *scienter* as the Government contends, the Congress thereby emphasized its importance as an element of the crime beyond its application merely to force and violence.

In both "robbery" and "extortion" criminal intent at common law was, and, by statutory construction now is, a necessary element of the crime. Both are crimes of the larceny category. "Robbery," says Clark on page 127 of his Summary of American Law, 1947, Edition, "is a common-law felony consisting of a larceny from the person committed by the open use of force or by intimidation." "Extortion," at common law, was the demanding and obtaining of money or other property, with the consent of

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5. The government in the vigor of making the contention is somewhat nebulous. For example, on page 14 of its Brief, appellant states: "The extortionist is unjustly enriched . . . whatever his rationale . . ."

the victim, induced by force, threats or any other undue exercise of power as well as by color of office. *United States vs. Sutter*, 160 F. 2nd 754, 756.

In any case, however, criminal intent is a necessary element. To constitute robbery the taking must be *animo furandi* 46 Am. Jur. 143, 310. Such, generally, is the rule also as to extortion. 22 Am. Juris. 237, Sec. 13. Particularly was it true in the New York decisions applying that state's Anti-Racketeering Act from which the Hobbs Act is an adaptation.

Section 850 of Article 80 of the New York Consolidated Laws defines Extortion as follows:

> "Extortion is the obtaining of property from another . . . with the consent, induced by the wrongful use of force or fear, or under color of official right."

As Representative Hobbs said, respecting his amendment, "The definitions in this bill are copied from the New York Code substantially," 91 Cong. Rec. 11900. Others concurred, 91 Cong. Rec. 11900-11906.

In New York, the intention to rob or extort was an essential element of the crime. *People vs. Koerder*, 1926, 244 N.Y. 147, 153-154; 155 N.E. 79, 82; *People vs. Garry*, 1933, 237 App. Div. 769, 263 N.Y.S. 288; and *People vs. Gassman*, 1943, 182 Misc. 878, 885-886, 45 N.Y.S. 2nd 709, 715, affirmed 1946, 295 N.Y. 254; People v. Vitusky, 1913, 155 N.Y. App. Div. 139, 154.

Thus at the time of the adoption by Congress, intent was clearly an element of either offense in New York. Apropos is the language of this Court in the case of *Metropolitan R. R. Co. vs. Moore*, 121 U.S. 558, 572; 30 L. ed. 1022, in construing the new statutory provisions establishing a judiciary in the District of Columbia:

> ". . . these provisions are to be construed in the

sense in which they were understood at the time in that system from which they were taken. In other words, we think that Congress adopted for this purpose the law of New York as it was understood in New York. *McDonald vs. Hovey*, 110 U.S. 619."

To say that Congress, by eliminating the words "the payment of wages by a bona fide employer to a bona fide employee" did away with the element of intent, save intent to commit acts of force, violence and fear, is to ignore the further fact that Congress inserted the words "robbery" and "extortion" as such. The debate as reported by the Government in its brief would indicate that these words were not surplusage but of uppermost consideration by the Congress in passing the Hobbs Act. The bill was not debated in the Senate. Vol. 91 of the Cong. Rec. 11899-11922, 79th Cong. 1st Ses. carries the record in the House. We have previously cited statements from Representative Hobbs, Representative Summers, and Representative Whittington, all stressing robbery and extortion. To these may be added others.

The matter was summed up by Representative Robsion at p. 11906 in the following language:

> "This bill merely makes clear robbery and extortion. . . . . So it is up to the Government to prove, beyond a reasonable doubt, that the person charged under this anti-racketeering bill has committed either robbery or extortion before such person can be convicted."

There are, however, perhaps even more cogent reasons why the Government's contention in this respect is erroneous. In the case of *Morissette vs. United States*, 342 U.S. 246, this Court, differentiating between regulatory statutes and those incorporating common law crimes, said:

> "Stealing, larceny, and its variants and equivalents, were among the earliest offenses known to the

law that existed before legislation; they are invasions of rights of property which stir a sense of insecurity in the whole community and arouse public demand for retribution, the penalty is high and, when a sufficient amount is involved, the infamy is that of a felony, which, said Maitland, is . . . 'as bad a word as you give to man or thing.' State courts of last resort, on whom fall the heaviest burden of interpreting criminal law in this country, have consistently retained the requirement of intent in larceny type offenses. . . .

"Congress, therefor, omitted any express proscription of criminal intent from the enactment before us in the light of an unbroken course of judicial decision in all constituent states of the Union holding intent inherent in this class of offense, even when not expressed in the statute. . . .

"And where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions not as a departure from them."

It has been pointed out heretofore that extortion is a crime of the larceny category. On this matter, too, the Congressional Record of debate is significant. Thus this colloquy on P. 11901, 91 Cong. Rec.:

Representative Walter: "In connection with the question asked by the gentleman from Pennsylvania, the gentleman should point out that the taking must be an unlawful taking."

Representative Hobbs, interjecting: "Certainly, sir. Thank you."

Later on, Represenative Walter, emphasizing the point, P. 11908: ". . . I call the gentleman's atten-

tion to the fact that a mere threat does not constitute a crime. There must accompany that threat an unlawful taking."

And so, at a time when the *Morissette* case was years in the future, Congress itself was neither unmindful nor uninformed of the principles involved. Managers of the bill clearly stated that the taking itself must be unlawful to constitute to crime.

C.

THE KEMBLE CASE

This leads directly to a consideration of the *Kemble Case*. This is a Circuit Court of Appeals case from the Third Circuit in which, by a divided decision, the judgment of conviction of the defendant, Kemble, was affirmed and that of the defendant Union reversed. Three judges disagreed with the majority. Two judges strongly dissented as to the affirmation and the Chief Judge concurred in part and dissented in part, holding that a new trial should have been granted for reasons other than those stated by the other two dissenting judges but that the judgment of acquittal of the Union was correct. The Government contends that this case "established a situation analogous to the instant case" (U. S. Brief, P. 33). With that, for two specific reasons, we cannot agree.

First, that case was decided on a review of the evidence. The sufficiency of the indictment was never questioned either as a pleading in itself or with relation to the statute, but the decision turned upon the proof. Apparently, defendants felt so sure of their position under the Act that they offered no evidence in defense at all. Here, on the other hand, the indictment and its sufficiency under the Act has been strenuously challenged from the start.

Second, the facts of evidence reviewed in that case are in at least one essential point altogether different from anything charged in the indictment here. There the defendant, Kemble, did not come upon the scene until after a substantial portion of the work had been completed. That was not true here nor is it alleged to be. There payment was sought for work already done by others. In effect,

As Mr. Justice Reed aptly said in his dissenting opinion in the Petrillo case (*United States vs. Petrillo*, 332 U.S. 1, 16):

> "This criminal statute is the product of legislation directed at the control of acts deemed evil by Congress. It is one of the many regulatory acts that legislative bodies have passed in recent years to make unlawful certain practices in the field of economics that seemed contrary to the public interest. These statutes made new crimes, deeds theretofore not subject to punishment, fall within the general scope of their prohibition. Common experience has not created a general understanding of their criminality. Consequently in order to adequately inform the public of the limitations on conduct, a more precise definition of the crime is necessary to meet constitutional requirements.
>
> "Anglo-American law does not punish citizens for violation of vague and uncertain statutes. There is no place in our criminal law for acts defined as detrimental to the interests of the State. A statute is invalid when 'so vague that men of common intelligence must necessarily guess at its meaning' . . .
>
> "This is a criminal statute. The principle that such statutes must be so written that intelligent men may know what acts of theirs will jeopardize their life, liberty or property is of importance to all."

See also quotation from *Connolly vs. General Construction Co.*, 269 U.S. 391 on P. 45 of this Brief.

How could the defendant, Green, for example, in pursuance of his duties as a union representative in demanding that the contractors, Terry and Wright, employ swampers as was customary and agreed to by contractors and laborers in the community, be expected to know that such a demand, even when force, violence and fear might be employed to secure compliance, was a violation of the Hobbs Act subjecting him to twenty years in the penitentiary, or a $10,000.00 fine, or both? Indeed, if he read

the Act in its entirety, including not only the definitions but also paragraph (c), how could he reasonably come to any conclusion other than that such conduct was not embraced by the Act? Without paragraph (c), the language gives him no warning. With that paragraph, it leads him to believe affirmatively that his demand was not covered. This Act is more than vague and indefinite; it is positively misleading. Such an Act cannot be Constitutional.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

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APPENDIX

THE COPELAND ANTI-RACKETEERING ACT

48 Stat. 979; 18 U.S.C. 420(a)-420(e) 1940 Ed.

Penalty Maximum: 10 years in prison; $10,000 fine, or both.

Sec. 420a—Interference with trade or commerce by violence, threats, etc.; penalties.

Any person who, in connection with or in relation to any act in any way or degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, *however, the payment of wages by a bona fide employer to a bona fide employee; or*

(b) Obtains the property of another, with his consent, or induced by wrongful use of force or fear, or under color of official right; or

(c) Commits or attempts to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sub-sections (a) or (b); or

(d) Conspires or acts concertedly with any other person or persons to commit any of the foreging acts, shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by fine of $10,000, or both.

420d—Same; jurisdiction of offenses.

Any person charged with violating Section 420a of this title may be prosecuted in any district in which any part of the offense has been committed by him or by his actual associates participating with him in the offense or by his fellow conspirators: *Provided*, that no court of the United States shall construe or apply any of the provisions of Sections 420a 420e of this title in such manner as to affect the rights of bona fide labor organizations in lawfully carrying out the legitimate objects thereof as such rights are expressed in existing statutes of the United States.

April 16, 1946

THE LEA OR PETRILLO ACT

60 Stat. 89; 47 U.S.C. Sec. 506.

Penalty Maximum: 1 year in prison; $1,000 fine or both.

Sec. 506 (a) It shall be unlawful, by the use of express or implied threats of the use of force, violence, intimidation, or duress, or by the use of express or implied threat or the use of other means, to coerce, compel or constrain or attempt to coerce, compel, or constrain a licensee—

(1) to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such licensee to perform actual services; or

(2) to pay or agree to pay or give any money or other thing of value in lieu of giving, or on account of failure to give, employment to any person or persons, in connection with the conduct of the broadcasting business of such licensee, in excess of the number of employees needed by such licensee to perform actual services; or

. . . . . .

(4) to pay or give or agree to pay or give any money or other thing of value for services in connection with the conduct of the broadcasting business of such licensee, which are not to be performed.

. . . . . .

(d) Whoever wilfully violates any provision of subsection (a) or (b) of this section shall, upon conviction thereof, be punished by imprisonment for not more than one year or by a fine of not more than $1,000.00, or both

. . . . . .

July 3, 1946

THE HOBBS ACT OF 1946

60 Stat. 420.

Penalty Maximum: 20 years in prison; $10,000 fine, or both.

TITLE I.

60 Stat. 420 Sec. 1. As used in this title—

(a) Defines Commerce.

. . . . . .

(b) The term 'robbery' means the unlawful taking or obtaining of personal property, from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or anyone in his company at the time of the taking or obtaining

(c) The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

Sec. 2. Whoever in any way or degree obstructs, delays, or affects commerce, or the movement of any article or

commodity in commerce, by robbery or extortion, shall be guilty of a felony.

Sec. 3. Whoever conspires with another or with others, or acts in concert with another or with others to do anything in violation of Section 2 shall be guilty of a felony.

Sec. 4. Whoever attempts or participates in an attempt to do anything in violation of section 2 shall be guilty of a felony.

Sec. 5. Whoever commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of section 2 shall be guilty of a felony.

Sec. 6. Whoever violates any section of this title shall, upon conviction thereof, be punished by imprisonment for more than twenty years or by a fine of not more than $10,000, or both.

"TITLE II.

"Nothing in this Act shall be construed to repeal, modify, or affect either section 6 or section 20 of an Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, or an Act entitled 'An Act to amend the judicial code and to define and limit the jurisdiction of the courts in equity, and for other purposes,' approved March 23, 1932, or an Act entitled 'An Act to provide for the prompt disposition of disputes between carriers and their employees and for other purposes,' approved May 20, 1926, as amended, or an Act entitled 'An Act to diminish the causes of labor disputes burdening or obstructing interstate or foreign commerce, to create a National Labor Relations Board, and for other purposes,' approved July 5, 1935."

June 23, 1947

TAFT-HARTLEY ACT

61 Stat. 140; 29 U.S.C. Sec. 158.

Penalty Maximum: (See Enforcement Provisions set out below establishing exclusive jurisdiction).

Sec. 8(b) (6) of the Taft-Hartley Act (Labor Management Relations Act of 1947) (60 Stat. 140) amended the National Labor Relations Act by, among other things, adding thereto the following (29 U.S.C.A. Sec. 158):

Sec. 8 . . . . . .

(b) It shall be an unfair labor practice for a labor organization or its agents—

. . . . . .

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed. . . . .

PREVENTION OF UNFAIR LABOR PRACTICES.

T. 29 U.S.C. 160 (a): Sec. 10 (a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce . . . . . .

(e) The Board shall have power to petition any circuit court of appeals of the United States, or, if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, ...

The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review. . . .

June 25, 1948

CODIFICATION OF HOBBS ACT

62 Stat. 793; 18 U.S.C. 1951.

Penalty Maximum: 20 years in prison; $10,000 fine or both.

18 U.S.C. 1951. (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

. . . . . .

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, Sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.